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REPORT ON

**Access by  
Telecommunications  
Companies to  
Customers in  
Multitenant  
Environments**

February 1999

VOLUME ONE

## **EXECUTIVE SUMMARY**

The 1995 amendments to Chapter 364, Florida Statutes, and the federal Telecommunications Act of 1996 were designed to promote competition. A Multitenant environment (MTE) in which a landlord or building owner controls access to the telecommunications equipment area or other related facilities in a structure appears to be a situation where limitations to competition may exist. A tenant in an MTE should have reasonable access to any telecommunications company, and a telecommunications company should have reasonable access to a tenant. Equally important, it is unacceptable for an incumbent local exchange company (ILEC) to use its incumbent position to limit an alternative local exchange company's (ALEC) ability to market its services or install its equipment in an MTE, and landlords should not impede access to competitive telecommunications service.

The pace of competition and outcome of negotiations between telecommunications providers, landlords, and tenants for access to MTEs is not acceptable to all participants. Some ALECs have experienced difficulty in negotiating acceptable financial and physical access arrangements with landlords and ILECs. ILECs have both obligations associated with carrier of last resort (COLR) responsibilities, and advantages associated with being the incumbent, monopoly provider. Landlords and property owners are protective of their constitutional rights to exclusive use and possession of their property. Their concerns about physical access to their communications facilities by multiple telecommunications companies are related to safety, security, time of access, liability, use of space, and limitations on available space.

In a competitive environment, all telecommunications companies, except ILECs with COLR responsibilities, must assess whether they can or will serve a specific structure or customer. The decision to serve is driven by a number of factors including, but not limited to, physical space constraints, technological limitations, and economic viability.

At the Legislature's direction, the Florida Public Service Commission (FPSC or Commission) has considered the promotion of a competitive telecommunications market to end users, consistency with any applicable federal requirements, landlord property rights, rights of tenants, and other considerations relevant to multitenant environments. The record developed during the course of this study indicates that there are several ways in which barriers to access may be

removed and competition may be encouraged. Some of these measures can be undertaken by the FPSC, however, it may also be appropriate for the Legislature to take a proactive role as well. The recommendations in this report attempt to minimize infringement on the existing property rights of landlords and on the landlord and tenant relationship. The following is a brief description of the six issues addressed by the report and the Commission's conclusions and recommendations regarding each issue.

### **Definition of Multitenant Environment**

If the goal of the state and federal telecommunication legislation is to create an environment that enhances opportunities for customers to benefit from competition, then the definition of MTE should be broad. The Commission recommends that any legislation developed defining MTE should include all types of structures and tenancies except: (1) condominiums, as defined in Chapter 718, Florida Statutes; (2) cooperatives, as defined in Chapter 719, Florida Statutes; (3) homeowners' associations, as defined in Chapter 617, Florida Statutes; (4) those short-term tenancies specifically included in Rule 25-24.610(1)(a), Florida Administrative Code, the FPSC's call aggregator rule; and (5) all tenancies of 13 months or less in duration. The Commission's conclusion to exclude condominiums, cooperative, and homeowners' associations is based on the premise that these organizations are operated through a democratic process with each owner having a vote. Tenancies of 13 months or less are also excluded in order to ensure that landlords are not inordinately burdened by the requirement to provide access for short-term tenancies that are not described in our call aggregator rules.

### **Definition of Multitenant Environment Telecommunications Services**

In determining what telecommunications services should be included in access, the Commission concludes that the rapid growth and deployment of unregulated communications technologies (e.g., wireless, rooftop satellite dishes, video conferencing, coaxial cable voice and data services, etc.) may render a broad statutory definition obsolete in a short time. Therefore, the services to which access applies should be limited to two-way telecommunications service to the public for hire within this state, pursuant to Section 364.02, Florida Statutes. For purposes of MTE

access, the Commission recommends that the definition of telecommunications services, as defined in Section 364.02, Florida Statutes, should not be amended.

### **Definition of Demarcation Point**

Keeping the demarcation point as set forth in Rule 25-4.0345, Florida Administrative Code, versus moving to the federal minimum point of entry (MPOE) is an issue that merits additional investigation by the FPSC. Moving to the MPOE may resolve some access issues by possibly giving the ALECs quicker access to the wiring; however, inhibiting the COLRs' ability to deliver service standards directly to the customer and potentially allowing an unregulated third party to become a factor in service may outweigh the benefits of moving to the MPOE. Information gathered at the workshops did not lead to a conclusion on whether the current FPSC demarcation point should be changed to the federal MPOE. Therefore, the Commission will gather additional information through a staff workshop on how demarcation should be defined. At the conclusion of the workshop, if there is sufficient reason for rulemaking, a proceeding will be initiated.

### **Conditions for Physical Access**

#### *Negotiations*

Issues associated with access to tenants by facilities-based ALECs appear to be the most controversial aspect of access in MTEs. Currently, there are only a limited number of facilities-based ALECs providing telecommunications service in Florida. Landlords' concerns that they may be deprived of the use of more property than just the "utility closet" are mitigated by the practical reality that there will only be a few facilities-based competitors in any one MTE. However, as competition in the telecommunications industry is encouraged, the landlords' property rights should be protected by applying standards of reasonableness to the terms and conditions of access in MTEs. Recommended standards for reasonable, nondiscriminatory, and technologically neutral access are identified in the section on jurisdiction. Therefore, the Commission recommends that ILECs, ALECs, landlords, and tenants be encouraged to negotiate all aspects of MTE access in good faith. Negotiations should be based on the premises of reasonable and nondiscriminatory access to MTEs. The tenant should be responsible for obtaining all necessary easements.

### *Exclusionary Contracts and Marketing Agreements*

Exclusionary contracts between telecommunications companies and landlords are anticompetitive and should be against public policy. Therefore, the Commission recommends that exclusionary contracts should be prohibited.

There was also discussion of marketing agreements in which a landlord is compensated for a tenant's becoming a customer of a particular telecommunications company. While these agreements are not as egregious and offensive to competition as exclusionary contracts, their use can result in discriminatory behavior, because the landlord who enters into such an agreement has a vested interest in each new customer subscribed under the marketing agreement. Therefore, the Commission recommends that landlords disclose to potential tenants the existence of a marketing agreement.

### **Compensation**

Any costs charged to telecommunications companies by landlords should be reasonable and nondiscriminatory. To the extent a facilities-based carrier installs equipment in an area already dedicated to public use, and the existing carrier obtained access to that space at no charge, additional carriers should also be provided access at no charge. However, where the designated utility space is inadequate for a particular carrier's needs, reasonable compensation should be provided to the landlord. The landlord may also be entitled to recover reasonable and nondiscriminatory costs associated with the maintenance and repair of telecommunications equipment. However, a fee imposed solely for the privilege of obtaining access creates a barrier to competitive entry; therefore, it is not in the public interest and should not be allowed. To the extent the Commission has jurisdiction, it should develop rules in order to set reasonable standards for determining compensation for costs related to access. The Commission's recommended standards for reasonable, nondiscriminatory, and technologically neutral access are set forth in the section on jurisdiction.

However, if it is determined by the Legislature that landlords may collect a fee for access, over and above the actual costs for installing facilities, any statute addressing that issue should also address whether space already being provided for no fee would then become subject to fees and whether the COLR providing mandated service must pay any fee at all. Further, no such fee should be charged to tenants unless the landlord is a certificated telecommunications company.

## **Jurisdiction**

Adopting legislation which sets forth standards for reasonable, nondiscriminatory, and technologically neutral access would assist in resolving the controversies between the landlords and telecommunications services providers. Any legislation developed should specifically describe the forum for resolving access-related disputes. Jurisdiction for resolving access could remain with the state courts; however, granting jurisdiction to the Commission would have the following advantages: (1) Commission experience in all aspects of the telecommunications industry, (2) Commission contract experience in access and arbitration issues under the federal act, and (3) uniformity of decisions on a statewide basis. For these reasons, the Commission recommends that it is the appropriate authority for resolving access issues.

The FPSC recommends that a threshold for bringing disputes and standards for review should be as follows:

1. Tenants, landlords, and telecommunications providers should make every reasonable effort to negotiate access to a tenant requesting service.
2. A landlord may charge a utility or tenant the reasonable and nondiscriminatory costs of installation, easements, or other costs related to providing service to the tenant.
3. The tenant should be responsible for obtaining all necessary easements.
4. A landlord may impose conditions reasonably necessary for the safety, security, and aesthetics of the property.
5. A landlord may not deny access to space or conduit, previously dedicated to public service, if that space or conduit is sufficient to accommodate the facilities needed for access.
6. A landlord may deny access where the space or conduit required for installation is not sufficient to accommodate the request or where the installation would harm the aesthetics of the building.
7. A landlord may not charge a fee solely for the privilege of providing telecommunications service in an MTE.

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## **LIST OF TERMS AND ABBREVIATIONS**

Alternative local exchange company - ALEC  
BellSouth Telecommunications, Inc. - BellSouth  
Building Owners and Managers Association of Florida, Inc. - BOMA  
Carrier of last resort - COLR  
Central Florida Commercial Real Estate Society and the Greater Orlando Association of REALTORS® - REALTORS  
Community Associations Institute - CAI  
Cox Florida Telcom, L.P. dba Cox Communications - Cox  
e.spire™ Communications, Inc. - e.spire  
Federal Communications Commission - FCC  
Florida Apartment Association - FAA  
Florida Association of Homes for the Aging - FAHA  
Florida Chapter - International Council of Shopping Centers - ICSC  
Florida Public Service Commission - FPSC or Commission  
GTE Florida, Inc. - GTE  
Incumbent local exchange company or local exchange company - ILEC  
Intermedia Communications, Inc. - Intermedia  
*Loretto v. Teleprompter Manhattan CATV Corp.* - *Loretto*  
Minimum point of entry - MPOE  
Multitenant environment - MTE  
National Association of Regulatory Utility Commissioners - NARUC  
OpTel (Florida) Telecom, Inc. - OpTel  
Shared tenant service - STS  
Sprint-Florida, Inc./Sprint Communications Company Limited Partnership - Sprint  
*Telco Communications Co. v. Clark* - *Telco*  
Teleport Communications Group, Inc./TCG South Florida - TCG  
Teligent, Inc. - Teligent  
Time Warner Telecom - Time Warner  
WinStar Communications, Inc. - WinStar  
WorldCom Technologies, Inc. - WorldCom

## INTRODUCTION

### Legislative History

Fostering the growth of a competitive telecommunications market is the stated purpose of the 1995 Florida Telecommunications Act (Chapter 364, Florida Statutes)<sup>1</sup> as well as the federal Telecommunications Act of 1996 (the Act or Public Law 104). Thus, it is essential that legislative or regulatory actions be designed to minimize or remove anticompetitive market conditions. The case of a multitenant environment (MTE), in which a landlord or building owner controls access to the telecommunications equipment area or other related facilities in a structure, appears to be a situation where limitations to competition may exist.

The subject of access to tenants in MTEs received considerable debate during the 1998 Florida legislative session. One proposed bill amendment included the following language:

No landlord shall demand or accept payment of any fee, charge or other thing of value from any certificated telecommunications company in exchange for the privilege of having access to any tenants of such landlord for the purpose of providing telecommunications services, and no landlord shall demand or accept any such payment from tenants in exchange for access to telecommunications services unless the landlord is a certificated telecommunications company.<sup>2</sup>

Building owners took the position that they have a constitutional right to control access to and use of their property. In their opinion, any effort, legislative or otherwise, to impose mandatory access to their properties by telecommunications service providers constituted an illegal taking under language contained in the Fifth Amendment to the United States Constitution and in Article X of the Florida Constitution.<sup>3</sup>

On the other hand, alternative local exchange companies (ALECs) stated that property access restrictions limited their opportunity to serve tenants. The ALECs also stated that landlord access

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<sup>1</sup>Section 364.01 (3), Florida Statutes reads in pertinent part: "The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, . . . and encourage investment in telecommunications infrastructure."

<sup>2</sup>House Amendment No. 1 to Bill No. PCB UCO 98-03 dated March 20, 1998, p. 14.

<sup>3</sup>Article X, Section 6 (a) of the Florida Constitution states in part that "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner." See also *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartments Associates, Ltd.*, 493 So.2d 417 (Fla. 1986).

restrictions effectively circumvented the objective of state and federal legislation to develop a competitive telecommunications market. In addition, ALECs asserted that their right to access and serve tenants should be subject to the same terms and conditions as that of the incumbent local exchange company (ILEC) currently serving the MTE with its own wiring and facilities.

### **Legislative Directive**

The result of this very controversial debate was that Section 5 of HB 4785, now Chapter 98-277, Laws of Florida, directed the Florida Public Service Commission (FPSC or Commission) to, among other things, conduct a study and report its conclusions, including policy recommendations, to the Legislature by February 15, 1999, on access by telecommunications companies to customers in MTEs. The FPSC was directed to hold publicly-noticed workshops and to consider the promotion of a competitive telecommunications market to end users, consistency with any applicable federal requirements, landlord property rights, rights of tenants, and other considerations developed through the workshop process and FPSC research.

### **Study Methodology**

The methodology employed to develop this report began with the drafting of a work plan. The focus of the work plan was three public workshops designed to solicit input from all participants interested in providing comments on the issue of access by telecommunications companies to tenants in MTEs. In addition to the workshops, the Commission researched and analyzed the access statutes of other states and a recently adopted National Association of Regulatory Utility Commissioners (NARUC) resolution regarding nondiscriminatory access to buildings for telecommunications carriers.<sup>4</sup>

The FPSC's first task was to identify and notify all potentially affected stakeholders. The affected telecommunications providers include ILECs and facilities-based and reseller ALECs. The landlord and property owner groups include a broad range of structure types and tenancies ranging from residential duplexes to high-rise and low-rise commercial and condominium structures. Tenancies range from less than a year to fixed multiyear lease agreements and typical occupancy rates vary as well. The notice list includes ILECs, ALECs, building owners, commercial and

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<sup>4</sup>See Appendix A for copies of other state telecommunications and cable television access statutes and Appendix B for a copy of the NARUC resolution.

residential property management groups, trade associations, real estate groups, condominium associations, the state E911 coordinator, nursing homes, a shared tenant service (STS) provider, Legislative staff, the Office of Public Counsel, and the Office of the Attorney General. Appendix C is a list of participants.

### **Workshops and Written Comments**

The Commission's work plan centered on three public workshops that were held in July, August, and September, 1998, respectively. Workshop discussions were guided by Commission-drafted questions, identified issues, and hypothetical scenarios for issue resolution. Prior to the first workshop, all interested participants were invited to comment on suggested issues. At the first workshop, the participants discussed the proposed issues and worked to limit the scope of future discussions to the most pertinent issues. Based on the comments provided at the workshop and the lists of suggested issues, the following six areas of concern were identified:

1. How should multitenant environment be defined? That is, should it include residential, commercial, transient, call aggregators, condominiums, office buildings, new facilities, existing facilities, shared tenant services, other?
2. What telecommunications services should be included in direct access, i.e., basic local service (Section 364.02(2), Florida Statutes), Internet access, video, data, satellite, other?
3. How should demarcation point be defined, i.e., current FPSC definition (Rule 25-4.0345, Florida Administrative Code) or the federal minimum point of entry (MPOE)?
4. With respect to actual, physical access to property, what are the rights, privileges, responsibilities or obligations of the following entities?
  - (a) landlords, owners, building managers, condominium associations
  - (b) tenants, customers, end users
  - (c) telecommunications companiesIn answering the question above, please address issues related to easements, cable in a building, cable to a building, space, equipment, lightning protection, service quality, maintenance, repair, liability, personnel, price discrimination, and other issues related to access.
5. Based on the response to question 4, are there instances in which compensation should be required? If yes, by whom, to whom, for what, and how is cost to be determined?
6. What is necessary to preserve the integrity of E911?

As noted above, issue six addresses maintaining the integrity of E911 in MTEs. However, during the course of the first workshop it became evident that none of the participants viewed this issue as a problem with respect to access in MTEs. All parties supported ensuring the integrity of E911 under any circumstances. The determination of the proper forum for resolution of disputes between affected participants was raised in later workshops. Therefore, the E911 issue was replaced with the jurisdiction-related issue set forth in the issues and conclusions that follow.

Prior to the second workshop, the participants were requested to file written comments regarding the six issues and to present their views for discussion at the second workshop. Volume II of this report contains a list of the identified issues and copies of initial comments submitted by seventeen participants in response to these issues. Copies of these documents can also be obtained by contacting the FPSC's Division of Records and Reporting at the following telephone number: (850) 413-6770 or from the FPSC homepage at <<http://www.scri.net/FPSC>>.

The second workshop produced a variety of comments regarding the possible legal ramifications of any mandated access proposal and the extent of access-related problems. Several participants presented details regarding the installation of their specific telecommunications equipment in MTEs. In addition, the participants discussed the key differences between the FPSC's demarcation point rule and the Federal Communication Commission's (FCC) minimum point of entry (MPOE) rule.

Prior to the third workshop, the participants were requested to file rebuttal comments regarding the issues presented at the second workshop and to prepare for discussion of Commission-proposed scenarios. Discussions at the third workshop focused on the advantages and disadvantages of moving the demarcation point to the MPOE, compensation issues, and the proper forum for resolution of disputes between telecommunications services providers, landlords, and tenants. Following the third workshop, participants were again provided an opportunity to file additional comments on any issue or concern.

### **Data Request**

A data request was issued on September 4, 1998, for the purpose of obtaining quantitative and qualitative data regarding instances of MTE access-related problems within Florida. All participants were asked to provide copies of any agreements (such as marketing agreements, exclusive contracts, and leases) designed to provide telecommunications service in MTEs. Participants were also asked to provide any other information or material they believed would be

useful to the Commission in its analysis of the MTE access issue. Thirteen responses to the data request were received.<sup>5</sup>

### **Analysis**

Participants' written comments, the workshop transcripts, and data responses were analyzed in the context of the six identified issues. The following report represents the results of those analyses. It is important to note that in spite of the divergent opinions expressed throughout the term of this project, none of the participants opposed the development of a competitive telecommunications environment.

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<sup>5</sup>Responses were received from: BellSouth Telecommunications, Inc.; Building Owners and Managers Association of Florida, Inc.; Community Associations Institute; Cox Communications; Florida Department of Management Services; GT Com Telephone Service; ITS Telecommunications Systems, Inc.; LaSalle Partners; MediaOne Fiber Technologies, Inc./MediaOne Florida Telecommunications, Inc.; Northeast Florida Telephone Company, Inc.; Teleport Communications Group, Inc./TCG South Florida; Teligent, Inc.; and WorldCom Technologies, Inc.

## **ISSUES AND CONCLUSIONS**

### **INTRODUCTION**

The introduction of a competitive telecommunications service provider's interests into a landlord and tenant relationship can create imbalances in that legal relationship. This is especially true when new competitive telecommunications service providers (e.g., ALECs) seek to build market share by inserting themselves into MTEs. Therefore, it is necessary to examine the rights, responsibilities, public policies, and their interrelationships to the various interests involved. The Commission began by reviewing the landlord and tenant relationship.

In the second workshop, one of the participants stated that access problems were being treated as property rights issues.<sup>6</sup> This statement succinctly explains why it is necessary to begin this report by describing the basic rights and responsibilities of landlords or property owners and tenants. This is a very broad topic. The Commission has limited its discussion to those rights and responsibilities pertinent to this report.

In the 1995 revisions to Chapter 364, Florida Statutes, the Legislature found that competition for local exchange telecommunications services is in the public interest and will provide customers with freedom of choice. The revisions also include the concept of universal service, which creates a statutory right to basic local service for any person requesting such service for an initial period of four years. See Section 364.025(1), Florida Statutes. Chapter 364, Florida Statutes, does not distinguish customers who are tenants from other customers.

### **Rights of Landlords and Tenants**

Property owners have constitutional rights to exclusive use and possession of their property. Governments may not take away those rights without compensation. The issue of compensation is discussed in a later portion of this report. Property owners may limit their rights by contract, in a lease agreement, for instance; but, even when property owners enter into a lease agreement, they retain certain rights over common areas, such as communications or utility closets. The landlord and tenant relationship is a contractual relationship. Because a lease is both a conveyance and a contract, the obligations of the landlord and tenant are a product of both property and contract law.

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<sup>6</sup>FPSC Document Number 09055, p. 65.

The terms of a lease set out any rights and responsibilities of the parties. A lease gives the tenant exclusive right to use and occupy the owner's property. Over time laws have been passed and cases have been decided which protect tenants and ensure minimum standards for rental property. In Florida, Chapter 83, Florida Statutes, governs both residential and nonresidential tenancies and establishes fundamental rights and responsibilities, such as the tenant's right to possession and use of leased premises and the obligation of the landlord to maintain the premises. Nothing in Chapter 83, Florida Statutes, specifically describes any rights or responsibilities with regard to telecommunications services.

At the present time, ILECs have a responsibility as carrier of last resort (COLR) pursuant to Section 364.025, Florida Statutes, to furnish basic local service to any person requesting such service within the company's service territory. Thus, access to tenants, at least for a COLR, is guaranteed, and landlords cannot prevent access to tenants by ILECs. If access to MTEs by ALECs is not encouraged, the ILEC will be the only provider of service. This would substantially limit the customer's freedom of choice contemplated in the 1995 amendments to Chapter 364, Florida Statutes. Another consideration related to the obligations of a COLR is that, although the COLR may be obligated to pay for use of existing telecommunications facilities, it has not historically been charged for general access to an MTE. If landlords are permitted to charge ALECs a fee for access to a building or use of space where the COLR is not charged, ILECs will retain an anticompetitive position.

When statutes and regulations mandate telecommunications companies' direct access to tenants, bypassing the landlord and possibly interfering with the landlord's property rights, a conflict is created. Landlords are concerned about the physical access to their communications facilities by multiple telecommunications companies. They are concerned with safety, security, time of access, liability, use of space, limitations on available space, and whether the work done by the competitive telecommunications companies will meet applicable codes. These concerns are at odds with the telecommunications companies' access to tenants and the tenants' freedom to choose alternative providers.

To move the telecommunications industry closer to competition, reasonable, nondiscriminatory, and technologically neutral access to tenants in MTEs should be encouraged. Traditionally, because telecommunications services in MTEs were delivered by a monopoly provider, aesthetics, the size of dedicated floor space, and other physical and constitutional constraints have not been at issue. However, even installations by ILECs have been subject to a



property owner's reasonable conditions. This should also be true in the new era of competition. The recommendations in this report attempt to minimize infringement on existing property rights of landlords and on the landlord and tenant relationship.

### **Issues Addressed by Study**

As a result of the first workshop, six issues were identified as key topics for further discussion. Originally, issue six addressed maintaining the integrity of E911 in MTEs. However, during the first workshop, participants indicated that this would not be a problem for any telecommunications provider. Therefore, issue six was replaced with the issue of determining the appropriate jurisdiction for resolving access-related disputes. The six areas of concern now are:

1. How should multitenant environment be defined? That is should it include residential, commercial, transient, call aggregators, condominiums, office buildings, new facilities, existing facilities, shared tenant services, other?
2. What telecommunications services should be included in direct access, i.e., basic local service (Section 364.02(2), Florida Statutes), Internet access, video, data, satellite, other?
3. How should demarcation point be defined, i.e., current FPSC definition (Rule 25-4.0345, Florida Administrative Code) or the federal MPOE?
4. With respect to actual, physical access to property, what are the rights, privileges, responsibilities or obligations of the following entities?
  - (a) landlords, owners, building managers, condominium associations
  - (b) tenants, customers, end users
  - (c) telecommunications companiesIn answering the question above, please address issues related to easements, cable in a building, cable to a building, space, equipment, lightning protection, service quality, maintenance, repair, liability, personnel, price discrimination, and other issues related to access.
5. Based on the response to question 4, are there instances in which compensation should be required? If yes, by whom, to whom, for what, and how is cost to be determined?
6. What is the proper forum for settling disputes and property claims regarding access to tenants in MTEs by telecommunications companies, i.e., Florida Public Service Commission, district court, legislative action, other?

This section provides a summary of the participants' initial positions on each of the six issues. The positions are followed by the FPSC's analysis of the participants' positions and the issue

as well as conclusions. Given that some participants are both ILEC and ALEC certificated telecommunications companies, it is important to note that some of the comments submitted in this project are couched in terms that make it difficult to determine the position a participant is advocating.

## **DEFINITION OF MULTITENANT ENVIRONMENT**

**Issue 1: How should multitenant environment be defined? That is, should it include residential, commercial, transient, call aggregators, condominiums, office buildings, new facilities, existing facilities, shared tenant services, other?**

**Recommendation:** The Commission recommends that the definition of MTE should be inclusive of all types of structures and tenancies except: (1) condominiums, as defined in Chapter 718, Florida Statutes; (2) cooperatives, as defined in Chapter 719, Florida Statutes; (3) homeowners' associations, as defined in Chapter 617, Florida Statutes; (4) those short-term tenancies specifically included in Rule 25-24.610(1)(a), Florida Administrative Code; and (5) all tenancies of 13 months or less in duration.

### **Summary of Initial Positions**

**BellSouth, GTE, and Sprint:** ILECs generally desire a broad definition of MTE encompassing all types of new and existing structures with residential or commercial tenancies. BellSouth includes in its definition single-family, residential subdivisions, where ownership of the access roads remain privately held rather than deeded to the local government. GTE defines MTE as a building or continuous property (which may be transversed by public thoroughfares) that is under the control of a single owner or management unit with more than one tenant that is not affiliated with the owner or management unit. GTE and Sprint exclude transients (served by call aggregators) and other sharing arrangements from the definition of MTE.

**Cox, e.spire, Intermedia, OpTel, TCG, Teligent, Time Warner, and WorldCom:** These ALECs include all building types in their definition of MTE. Intermedia and TCG exclude transients from their definition of MTE.

**BOMA and ICSC:** These participants did not submit a response on this issue.

**CAI, FAA, and REALTORS:** CAI indicates that MTE should be broadly defined. FAA and REALTORS exclude residential property from the definition of MTE. FAA also excludes tenancies shorter than 13 months.

**FAHA:** FAHA members who utilize telecommunications equipment for STS do not compete with telecommunications companies.

## Analysis

Defining the phrase "multitenant environment" serves as the starting point for this report. As shown below, the words "multi," "tenant," and "environment" have relatively unambiguous meanings. However, when they are combined and used in the context of a tenant seeking access to a telecommunications provider, linguistic and legal definitions can become clouded by personal and professional interpretations. According to *Webster's Ninth New Collegiate Dictionary*, the word "multi" means "many, multiple, much, or more than one."<sup>7</sup> Section 83.43 (4), Florida Statutes, defines "tenant" as any person entitled to occupy a dwelling unit under a rental agreement.<sup>8</sup> The word "environment" is used throughout the Florida Statutes but it is often preceded by an adjective such as home, social, or physical. *Webster* defines "environment" as "the circumstances, objects, or conditions by which one is surrounded."<sup>9</sup> The FCC defines multiunit premises as including, but not limited to, residential, commercial, shopping centers, and campus situations.<sup>10</sup> The participants generally agree on the definition of "multi" and offer a range of opinions regarding "tenant" and "environment."

On the whole, ILECs desire a broad definition of MTE encompassing all types of new and existing structures with residential or commercial tenancies. BellSouth includes in its MTE definition single-family, residential subdivisions, where ownership of the access roads remains privately held rather than deeded to the local government.<sup>11</sup> The rationale given for including all types of structures is that any limitation on the definition of MTE inhibits opportunities for competition. GTE and Sprint both support a broad definition of MTE inclusive of all tenant situations, whether residential or commercial or single or multiple buildings.<sup>12</sup> Similarly, ALEC

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<sup>7</sup>Frederick C. Mish, ed., *Webster's Ninth New Collegiate Dictionary*, Merriam-Webster, Inc., Springfield, Mass., 1986, p. 779.

<sup>8</sup>"Rental agreement" is defined in Section 83.43(7), Florida Statutes, as any written agreement, . . . providing for use and occupancy of premises. According to Section 83.43 (5), Florida Statutes, "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

<sup>9</sup>Mish, p. 416.

<sup>10</sup>47 CFR Ch 1 §68.3, p. 188.

<sup>11</sup>FPSC Document Number 07980, p. 3.

<sup>12</sup>FPSC Document Number 07978, pp. 1-2 and FPSC Document Number 07975, p. 3.

participants desire to include all building types in their definition of MTE because only by defining the environment broadly will there be maximum opportunities for competition.<sup>13</sup>

The general exception to the ILEC's and the ALEC's definition of MTE is transient populations served by payphones or a call aggregator.<sup>14</sup> Given that tenancies in transient facilities are brief, transient tenants do not reside in a facility long enough to justify the time and expense necessary to become a subscriber of a telecommunications provider. Telephone service for transient facilities are usually provided by call aggregators who are, to a certain limited degree, under FPSC jurisdiction. Rule 25-24.610(1), Florida Administrative Code, was established in recognition of the fact that the telecommunications services and equipment needed to serve this population are different than other types of tenancies.

Similarly, telephone service provided to tenants through the common equipment not owned by the ILEC (i.e., shared tenant service) is defined by the FPSC in Rule 25-24.560(10), Florida

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<sup>13</sup>ALECs holding this view include: e.spire Communications, FPSC Document Number 07941, pp. 4-5; Intermedia Communications, Inc., FPSC Document Number 07974, pp. 1-2; OpTel Telecom, Inc., FPSC Document Number 07969, pp. 4-5; Teleport Communications Group, Inc., FPSC Document Number 07968, p. 9; Teligent, Inc., FPSC Document Number 07979 pp. 7-8; Time Warner Telecom, FPSC Document Number 07966, pp. 2-3; Cox Communications, FPSC Document Number 07967, pp. 3-4; and WorldCom Technologies, Inc., FPSC Document Number 07970, p. 3.

<sup>14</sup>Rule 25-24.610(1)(a), Florida Administrative Code defines "Call Aggregator" as any person or entity other than a certificated telecommunications company that, in the ordinary course of its operations, provides telecommunications service to any end user. Subject to the definition above, "call aggregator" includes but is not limited to the following:

1. Hotel as defined in Section 509.242(1)(a), Florida Statutes (1995),
2. Motel as defined in Section 509.242(1)(b), Florida Statutes (1995),
3. Resort condominium as defined in Section 509.242(1)(c), Florida Statutes (1995),
4. Transient apartment as defined in Section 509.242(1)(e), Florida Statutes (1995),
5. Rooming house as defined in Section 509.242(1)(f), Florida Statutes (1995),
6. Resort dwelling as defined in Section 509.242(1)(g), Florida Statutes (1995),
7. Schools required to comply with any portion of Chapters 228 and 246m Florida Statutes (1995), or Section 229.808, Florida Statutes (1995),
8. Nursing home licensed under Section 400.062, Florida Statutes (1995),
9. Assisted living facility licensed under Section 400.407, Florida Statutes (1995),
10. Hospital licensed under Section 395.003, Florida Statutes (1995),
11. Timeshare plan as defined in Section 721.05(32), Florida Statutes (1995),
12. Continuing care facility certificated under Section 651.023, Florida Statutes (1995), and
13. Homes, communities, or facilities funded or insured by the United States Department of Housing and Urban Development (HUD) under 12 U.S.C.S. §1701q (Law. Co-op. 1994) that sets forth the National Housing Act program designed to aid the elderly.

Administrative Code.<sup>15</sup> Written comments from the FAHA indicate that its members who utilize telecommunications equipment for STS do not compete with telecommunications companies, but simply facilitate the acquisition and management of telephone services on behalf of residents who might not otherwise be able to do so.<sup>16</sup> However, it is important to note that Section 364.339(5), Florida Statutes, provides for tenants in an STS building to have access to the COLR of local exchange telecommunications service instead of the STS provider. Section 364.339(5) Florida Statutes, states:

The offering of shared tenant service shall not interfere with or preclude a commercial tenant's right to obtain direct access to the lines and services of the serving local exchange telecommunications company or the right of the serving local exchange telecommunications company to serve the commercial tenant directly under the terms and conditions of the commission-approved tariffs.

No comments from the participants indicate the presence of access-related problems with STS providers.

Some Florida-based organizations representing commercial and residential properties hold different views of MTEs. Property groups such as the FAA and the REALTORS prefer that residential structures such as apartments, condominiums, and housing cooperatives either be classified separately or omitted from the definition of MTE because occupancy rates are often less than one year.<sup>17</sup> They argue that allowing tenants to make multiple changes in their choice of telecommunications provider during such a short period of time will be disruptive to other tenants and create additional work and costs for the landlord who will have to monitor equipment installations and removals. The CAI states that the term MTE should be broadly defined. However, CAI also believes that condominiums, cooperatives, and homeowners's associations should be excluded from the definition of an MTE because the owners of property in these associations participate in a democratic decision-making process in matters related to common property usage.

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<sup>15</sup>Rule 25-24.560(10), Florida Administrative Code, states: "Shared tenant service" (STS) as defined in section 364.339(1), Florida Statutes, means the provision of service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.

<sup>16</sup>FPSC Document Number 09554, p. 2.

<sup>17</sup>FPSC Document Number 07977, p. 2., and FPSC Document Number 07973, p. 6.

## **Conclusion**

If the goal of the state and federal telecommunication legislation is to create an environment that enhances opportunities for customers to benefit from competition, then the definition of MTE should be broad. Based on the comments filed by the participants and the focus on encouraging competition, the Commission concludes that the definition of MTE should be inclusive of all types of structures and tenancies except condominiums, cooperatives, homeowners' associations, those short-term tenancies specifically included in the FPSC's call aggregator rule, and all tenancies of 13 months or less in duration. The Commission's conclusion to exclude condominiums, cooperatives, and homeowners' associations is based on the premise that these organizations are operated through a democratic process with each owner having a vote. Tenancies of 13 months or less are also excluded in order to ensure that landlords are not inordinately burdened by the requirement to provide access for short-term tenancies that are not described in our call aggregator rules.

## **DEFINITION OF MULTITENANT ENVIRONMENT TELECOMMUNICATIONS SERVICES**

**Issue 2: What telecommunications services should be included in "direct access," i.e., basic local service (Section 364.02(2), Florida Statutes), Internet access, video, data, satellite, other?**

**Recommendation:** For purposes of MTE access, the Commission recommends that the definition of telecommunications services, as defined in Section 364.02, Florida Statutes, should not be amended.

### **Summary of Initial Positions**

**BellSouth:** Direct access should include all services. Carriers should be free to choose the desired technologies to deliver the services.

**GTE:** Direct access should include basic local service.

**Sprint:** All telecommunications services as defined in 47 U.S.C. § 153 (43), regardless of access media used, should be included in direct access.

**Cox:** Telecommunications services to include in direct access should be local and intra/inter LATA long distance telephone services under the jurisdiction of the FPSC.

**e.spire, TCG, Teligent, Time Warner, and WorldCom:** These ALECs support inclusion of all telecommunications services.

**Intermedia:** Services that qualify under Chapter 364, Florida Statutes, as intrastate telecommunications services should be included in the definition of applicable telecommunications services.

**OpTel:** Direct access should be construed broadly but for purposes of this study should include only those services that require a certificate of public convenience and necessity from the FPSC.

**BOMA and REALTORS:** All forms of telecommunications services should be considered.

**CAI and FAHA:** These participants did not respond to this issue.

**FAA:** Only basic local service should be included in a definition of MTE telecommunications services.



**ICSC:** Direct access is an issue that must be negotiated between building owners, tenants, and telecommunications carriers.

## **Analysis**

With regard to what telecommunications services should be included in offering access to MTEs, it is important to begin by explaining how specific terms are defined in the federal and state statutes. The term "telecommunications service" is defined by the FCC in 47 U.S.C. § 153(43) as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." Sections 364.02(11), (12), and (13), Florida Statutes, define the following terms in this manner:

- (11) "(Telecommunications) Service" is to be construed in its broadest and most inclusive sense;
- (12) "Telecommunications company" as . . . every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility . . .; and
- (13) "Telecommunications facility" as . . . real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within this state.

Workshop participants offer a broad range of positions on what telecommunications services should be included in MTE access. From the ILEC perspective, BellSouth and Sprint believe that all telecommunications services should be included in direct access to MTEs and that telecommunications carriers should be free to choose the technologies used to deliver these services. For example, Sprint states:

Absent a rational basis for doing so, excluding some telecommunications services from "direct access" while including others would appear to violate the procompetitive, non-discriminatory (sic) framework contemplated in the 1996 (telecommunications) Act and the 1995 Amendments to Chapter 364, Florida Statutes.<sup>18</sup>

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<sup>18</sup>FPSC Document Number 07975, p. 4.

GTE Florida, another ILEC, takes a more limited approach stating:

Telecommunications services that comprise "direct access" should include the network access functions that are enjoyed by and currently available to the vast majority of Floridians (and Americans) today--i.e., basic local service.<sup>19</sup>

In general, most of the ALEC participants<sup>20</sup> support inclusion of all telecommunications services in their definition of direct access to MTEs. Cox, Intermedia, and OpTel provide three alternate definitions. Cox Communications states that "local and intra/inter LATA long distance telephone services under the jurisdiction of the FPSC should be included as applicable services."<sup>21</sup> Intermedia states that companies providing services that qualify under Chapter 364, Florida Statutes, as intrastate telecommunications services should be allowed.<sup>22</sup> OpTel limits its definition to only those services that require a certificate of public convenience and necessity from the FPSC.<sup>23</sup>

From the landlord and building owner perspective, BOMA and the REALTORS believe that a broad definition of telecommunications services is appropriate.<sup>24</sup> The FAA states that if direct access is mandated, basic local service is the only service that should be included in a definition of applicable telecommunications services.<sup>25</sup>

## Conclusion

Within the range of definitions presented on this subject, there is little common ground. Support for limiting the definition of telecommunications services to those currently regulated under Chapter 364, Florida Statutes, is not overwhelming. However, the rapid growth and deployment of

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<sup>19</sup>FPSC Document Number 07978, p. 2.

<sup>20</sup>These ALECs include: e.spire Communications, FPSC Document Number 07941, p. 4; Teleport Communications Group, Inc., FPSC Document Number 07968, pp. 9-10; Teligent, Inc., FPSC Document Number 07979, pp. 8-9; Time Warner Telecom, FPSC Document Number 07966, p. 3; and WorldCom Technologies, Inc., FPSC Document Number 07970, pp. 3-4.

<sup>21</sup>FPSC Document Number 07967, p. 4.

<sup>22</sup>FPSC Document Number 07974, p. 2.

<sup>23</sup>FPSC Document Number 07969, p. 5.

<sup>24</sup>FPSC Document Number 08364, p. 5., and FPSC Document Number 07977, p. 2.

<sup>25</sup>FPSC Document Number 07973, p. 7.

unregulated communications technologies (e.g., wireless, rooftop satellite dishes, video conferencing, coaxial cable voice and data services, etc.), may render any new broader statutory definition obsolete in a short time. Therefore, the services to which access applies should be limited to two-way telecommunications service to the public for hire within this state, pursuant to Section 364.02, Florida Statutes.

## **DEFINITION OF DEMARCATION POINT**

**Issue 3:** How should "demarcation point" be defined, i.e., current FPSC definition (Rule 25-4.0345, Florida Administrative Code) or the federal Minimum Point of Entry (MPOE)?

**Recommendation:** Information gathered at the workshops did not lead to a conclusion on whether the current FPSC demarcation point should be changed to the federal MPOE. Therefore, the Commission will gather additional information through a staff workshop on how demarcation should be defined. At the conclusion of the workshop, if there is sufficient reason for rulemaking, a proceeding will be initiated.

### **Summary of Initial Positions**

**Bell South:** Supports the Commission's existing demarcation point rule.

**GTE:** Recommends adoption of the FCC's MPOE.

**Sprint:** Desires a comprehensive review of the existing rule as an extension of this project.

**Cox, Intermedia, OpTel, TCG, and Time Warner:** Support changing the demarcation point to the FCC's MPOE.

**e.spire and Teligent:** The MPOE should be the demarcation point separating the MTE owner-controlled inside wire from the ILEC network.

**WorldCom:** The MPOE or demarcation point should be established in consultation with the property owner.

**BOMA:** Due to an ongoing study of the issue by its national organization, the Florida BOMA chapter is unable to take a position at this time.

**CAI:** Supports a change to the FCC's MPOE.

**FAA and Realtors:** Did not respond in writing to this issue.

**FAHA:** Did not respond to this issue.

**ICSC:** Supports the FPSC's current demarcation point rule.

## Analysis

The physical point in the telecommunications network at which the responsibility of the telecommunications company begins and ends and the customer's responsibility begins and ends is called the "demarcation point." Defining the parameters of the demarcation point establishes not only the physical boundaries between the customer and the telecommunications service provider, but also the responsibilities for maintenance, repair, or removal of telecommunications equipment or wiring from the MTE. Rule 25-4.0345(1)(b), Florida Administrative Code, defines the demarcation point as:

The point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the telephone network and the customer's premises wiring. Unless otherwise ordered by the Commission for good cause shown the location of this point is:

... Single Line/Multi Customer Building - Within the customer's premises at a point easily accessed by the customer or

... Multi Line Systems/Single or Multi Customer Building - At a point within the same room and within 25 feet of the Federal Communications Commission (FCC) registered terminal equipment or cross connect field . . . .

For MTEs, this rule defines the demarcation point for installations as a point easily accessible by the customer within the customer's premises. For commercial tenants in buildings with common equipment, such as multiline phone systems, the demarcation point is within the customer's premises and in the same room with the electronics that operate the common equipment. The wiring from the telecommunications company up to the demarcation point is considered network wire. Responsibility for maintaining and repairing the wiring up to the demarcation point rests with the local exchange telecommunications company serving that customer. The demarcation rule does not currently apply to ALECs.

Many other states have adopted the FCC's definition of demarcation point, which is referred to as the minimum point of entry (MPOE).<sup>26</sup> FCC Rule 47 C.F.R. 68.3(2), requires the following in regard to MPOE:

In multiunit premises in which wiring is installed after August 13, 1990, including additions, modifications and rearrangements of wiring existing prior to that date, the

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<sup>26</sup>For purposes of the remainder of this report, the term "demarcation point" means the FPSC definition, and the acronym "MPOE" refers to the FCC definition of the minimum point of entry.

telephone company may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry. If the telephone company does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate locations for each customer. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 30 cm (12 inches) from where the wiring enters the customer's premises.

The current demarcation point rule considers each tenant as the customer of the ILEC and does not allow any third party, such as a landlord, entry between the ILEC and its customer. The demarcation point is the point as close as possible inside of the customer's premises (i.e., the phone jack). On the other hand, MPOE gives the property owner or landlord the opportunity to decide where to place the MPOE rather than the tenant, if the telephone company does not have an established policy of using the MPOE. Thus, the MPOE may be further removed from the customers' premises than the demarcation point.

Among the ILECs, there is no uniformity of opinion regarding whether Florida should retain its demarcation point or change to the MPOE. Although BellSouth fully supports the FPSC's existing demarcation point rule, it proffers the following alternate definition:

**Demarcation Point:** The demarcation point for telecommunications services is defined as the physical point at which a provider of access to the public switched network delivers, and has full service responsibility for, services which that carrier provides to its subscribers. Unless the subscriber and carrier mutually agree on a different arrangement, the demarcation point shall consist of a carrier-provided interface connection which is clearly identifiable by the subscriber, and which provides the subscriber with:

- a) an easily accessible way to connect subscriber-provided wiring to the interface and;
- b) a plug and jack connection which provides the subscriber with a means to quickly and easily disconnect the carrier's access channel from the subscriber's wiring or terminal equipment in order to prevent harm to the public switched network and to facilitate service trouble isolation and determination by the subscriber and carrier.

**Location of the Demarcation Point:** Subscribers shall designate the demarcation point in accordance with applicable statutes, rules, tariffs and/or service agreements reached with telecommunications carriers. At multi-tenant (sic) properties where

demarcation point locations must be established prior to occupancy, the demarcation points will be assumed to be located within the premises of the tenants/subscribers.<sup>27</sup>

GTE Florida recommends that the FPSC adopt the MPOE but that any such adoption be conditioned on the ILEC securing full recovery of its investment in any affected facilities.<sup>28</sup> Sprint holds that the Commission should consider undertaking a separate comprehensive review of the demarcation point rule as an extension of the MTE project.<sup>29</sup>

ALECs argue that having to rely upon ILECs for timely access to equipment closets and inside wiring connections in MTEs places them at a competitive disadvantage with regard to the ILECs. It appears that the ILECs could delay access to tenants if the ILECs owned the cable facilities in the MTE by not providing access to the cables or delaying the processing of service orders. In their opinion, moving to an MPOE would eliminate the opportunity for ILECs to exercise market power through ownership and control of MTE telecommunications equipment. The ALECs<sup>30</sup> are nearly unanimous in their position that the MPOE is the appropriate transition point between the customer and the telecommunications facilities. TCG, an ALEC, also prefers adoption of the MPOE but adds that the Legislature must also enact legislation requiring MTE owners to provide nondiscriminatory access to house and riser cable.<sup>31</sup> Teligent, and e.spire, both ALECs, offer a variation to the MPOE. They suggest that the MPOE should be the demarcation point separating MTE owner-controlled inside wire from the ILEC network.<sup>32</sup> Finally, WorldCom, an ALEC, states that the demarcation point should be established in consultation with the property owner.<sup>33</sup>

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<sup>27</sup>FPSC Document Number 07980, p. 5.

<sup>28</sup>FPSC Document Number 97978, pp. 4-5.

<sup>29</sup>FPSC Document Number 07975, p. 5.

<sup>30</sup>ALECs holding this position included: Cox Communications, FPSC Document Number 07967, p. 2; Intermedia Communications, Inc., FPSC Document Number 07974, p. 2; OpTel Telecom, Inc., FPSC Document Number 07969, p. 8; Teleport Communications Group, FPSC Document Number 07968, p. 12; and Time Warner Telecom, FPSC Document Number 07966, p. 4.

<sup>31</sup>FPSC Document Number 07968, pp. 12-13.

<sup>32</sup>FPSC Document Number 07979, p. 11, and FPSC Document Number 09055, pp. 61-62.

<sup>33</sup>FPSC Document Number 07970, p. 4.

The landlord groups hold varying opinions with regard to the appropriate demarcation point or MPOE. BOMA states that the current FPSC rule is acceptable; however, it reserves the right to change its position because the issue is being studied at the national level by BOMA International, its parent organization.<sup>34</sup> The CAI favors adoption of the MPOE in order to be consistent with the FCC.<sup>35</sup> The ICSC supports continued use of the FPSC demarcation point rule.<sup>36</sup> The FAA and REALTORS did not take a position on the issue; however, they oppose the adoption of any access provision that would prevent a landlord or building owner from exercising complete control over and use of his or her property.

There are advantages to moving the demarcation point. Moving to the MPOE could possibly give ALECs quicker access to tenants because they may not have to interconnect with the ILEC. For example, Teligent provides service by placing microwave dishes on rooftops and connecting with the inside wire at the MPOE. Because the wire from the MPOE to the customer would be deregulated in the MPOE scenario, ownership of the wire might transfer to the landlord. Moving to the MPOE may give an ALEC like Teligent access to deregulated inside wire through negotiations with the landlord; thus, eliminating having to interconnect with the ILEC on premises.

There have also been allegations by ALECs that ILECs have delayed their installation orders. Moving to the MPOE and eliminating ILEC participation in the installation could alleviate this access problem. Another advantage of moving to MPOE is the possibility of ALECs having access to inside wiring for free. If the wiring is owned by the landlord, it is possible that the landlord could allow various companies use of the wire without charge or in return for lower compensation through a contractual arrangement. This could reduce the overall cost to the ALEC to provide service and would foster competition.

There are also disadvantages to moving the demarcation point. If the demarcation point is moved to the MPOE, the wire beyond the MPOE represents a substantial capital investment in wiring installed by ILECs. In Florida, there are many buildings in which the wiring has not been fully depreciated. The question then becomes, should an ILEC be compensated for its loss of

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<sup>34</sup>FPSC Document Number 08364, pp. 6-7.

<sup>35</sup>FPSC Document Number 07976, p. 12.

<sup>36</sup>FPSC Document Number 10962, p. 8.



investment since changing ownership of the wiring without compensation would be considered a taking? Several states that use the MPOE as the demarcation point have indicated that they use a 5 or 10-year amortization plan to compensate an ILEC. However, such a plan can be problematic because the remaining customers of the ILEC would bear the cost of the amortization. Therefore, it may be appropriate to require an ALEC to share in the amortization costs when accessing tenants. If ownership of the deregulated wire is given to the landlord at the conclusion of the amortization, an ALEC could be charged a higher fee for use of the wiring by the landlord than that ALEC would have experienced using an ILEC's facilities under current demarcation rules. Such an increase in the cost of providing service could result in an impediment to competition.

Landlord-owned conduit space is another consideration that could be affected by moving the demarcation point. Using the MPOE, any number of companies could request the use of conduit space to run their own wiring. This could lead to conduit being filled in a very short time with no room for additional conduit to be installed. An example of limited conduit space is in airport facilities where the installation of conduit can be problematic because conduits are located under the runways. If the demarcation point remains as required under current rules, the wiring is considered network wire and remains under FPSC jurisdiction. Therefore, effective use of existing facilities could be mandated by rule and eliminate redundant facilities being installed.

Using the MPOE demarcation, a landlord-established demarcation point could be in a location other than the tenant's unit, such as a different floor, opposite end of the building, or other location not easily accessible by the tenant. This allows a third party, such as a landlord, to assume responsibility for ensuring connection between the MPOE and the tenant. All service standards imposed by the FPSC stop at the demarcation point. Telecommunications companies are not responsible for installations and repair beyond the demarcation point. Therefore, if there is an unregulated party responsible for the service between the demarcation point and the customer, the FPSC cannot ensure that the service will be safe, adequate, and at the standards now held for telecommunications service. Similarly, since the demarcation rule does not apply to ALECs, the FPSC cannot ensure consistent service quality where an ALEC brings network wire to a customer.

In an STS facility with common equipment, the demarcation point may be the same as the MPOE. However, if a tenant discontinues service from an STS, the demarcation point for that tenant changes back to inside the tenant's premises, and the FPSC rule then conflicts with the MPOE.

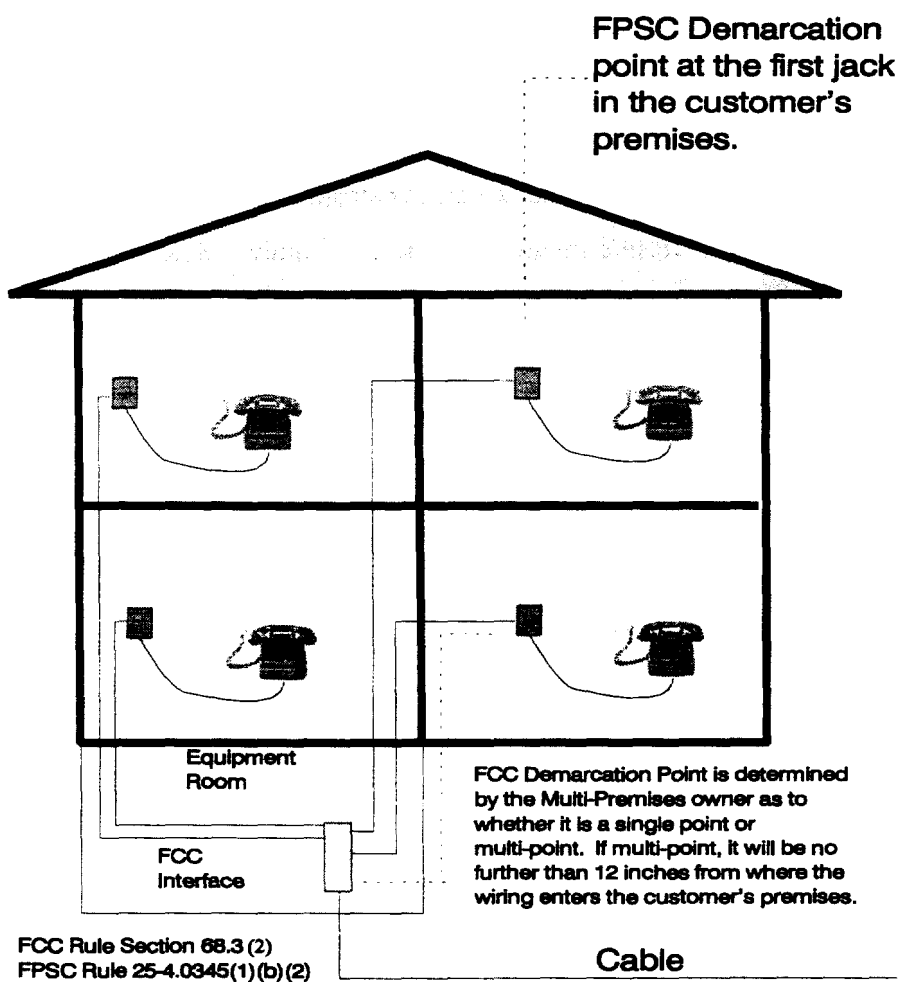
Illustration 1 depicts this demarcation conflict. To date, the FCC has not preempted a state's ability to establish its own demarcation point.

It became apparent through the workshop process that there simply is insufficient history of facilities-based ALECs experiencing problems accessing tenants in MTEs because of the demarcation rule. Currently, most ALECs serve businesses, not residential customers, and access has been gained through either an interconnection agreement, if the ALEC is reselling the ILEC service, or through an agreement with the landlord.

Rule 25-4.0345(1)(b)(2), Florida Administrative Code, requires that the demarcation point in an MTE without common equipment be the first jack in a customer's premises. Two of the rationale for establishing this demarcation point were to establish the service responsibilities of the ILEC and to provide the customer with the ability to determine the responsible party if a service problem exists. With only the ILEC and the customer involved in the service, it is clear who the customer must contact to facilitate repairs. In addition, maintaining the demarcation point will ensure that the responsibility of service quality standards are delivered to the customer, not the landlord. If the demarcation rules are also applied to the ALECs, it will ensure that any service standards the ALECs hold themselves to will be delivered directly to the customer. Although moving the demarcation point to the MPOE may help ALECs gain access to tenants in MTEs, it sets the stage for the possible degradation of service quality because the COLR would no longer be required to deliver service directly to the customer. If the customer was not satisfied with the service of the ALEC, the customer would not be guaranteed the quality of service provided through the current demarcation rules because the landlord or other third party would be interjected between the COLR and the customer.

## ILLUSTRATION 1

### Multiunit without Common Equipment



These rules and standards are an important component of the Commission's consumer protection provisions. If the demarcation point is set at any location other than the customer's premises (e.g., the MPOE), the landlord may be responsible for maintaining a portion of the facilities without regulation. This scenario may not be in the best interest of customers. Adoption of the MPOE could weaken existing customer protections and may not solve the fundamental issue of how to ensure nondiscriminatory access to MTEs by ALECs or other telecommunications providers. Using the current FPSC demarcation rules, the economical use of existing facilities would be encouraged through appropriate compensation to the owner of the facilities as discussed in the compensation section of this report.

## **Conclusion**

Keeping the demarcation point as set forth in Rule 25-4.0345, Florida Administrative Code, versus moving to the MPOE is an issue that merits additional investigation by the FPSC. Moving to the MPOE may resolve some access issues by possibly giving the ALECs quicker access to the wiring; however, the inhibiting of the COLRs' ability to deliver service standards directly to the customer and allowing the possibility of an unregulated third party becoming a factor in service may outweigh the benefits of moving to the MPOE. Therefore, the Commission will conduct a staff workshop to gather information on the efficacy of rulemaking. At the conclusion of the workshop, if there is sufficient reason for rulemaking, a proceeding will be initiated.